PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43*bis*.1)

Date of mailing *(day/month/year)*	See form PCT/ISA/210
Applicant's or agent's file reference #ROVI 103-03	FOR FURTHER ACTION See paragraph 2 below

International application No.	International filing date *(day/month/year)*	Priority date *(day/month/year)*
PCT/EP2004/052792	04.11.2004	11.11.2003

International Patent Classification (IPC) or both national classification and IPC
A61K7/00, A61K7/48, A61K31/52, A61K35/78, A61P9/14, A61P17/00

Applicant
ROVI GMBH & CO. KOSMETISCHE ROHSTOFFE KG

1. This opinion contains indications relating to the following items:

☒	Box No. I	Basis of the opinion
☐	Box No. II	Priority
☐	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
☐	Box No. IV	Lack of unity of invention
☒	Box No. V	Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
☐	Box No. VI	Certain documents cited
☐	Box No. VII	Certain defects in the international application
☒	Box No. VIII	Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1*bis*(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP Facsimile No.	Authorized officer Telephone No.

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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

   ☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

   a. type of material

      ☐ a sequence listing

      ☐ table(s) related to the sequence listing

   b. format of material

      ☐ in written format

      ☐ in computer readable form

   c. time of filing/furnishing

      ☐ contained in the international application as filed.

      ☐ filed together with the international application in computer readable form.

      ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	3, 5, 6, 10, 15-18	YES
	Claims	1, 2, 4, 7-9, 11-14, 19	NO
Inventive step (IS)	Claims		YES
	Claims	1-19	NO
Industrial applicability (IA)	Claims	1-19	YES
	Claims		NO

2. Citations and explanations:

1. Reference is made to the following documents; unless otherwise indicated, the passages cited in the International Search Report are considered to be the relevant passages.

D1: BELCARO G ET AL.: "Essaven gel: Review of experimental and clinical data" ANGIOLOGY, vol. 52, no. Supplement 3, December 2001 (2001-12), pages S1-S4, XP009043738 ISSN: 0003-3197

D2: WO 01/54653 A (MERCK PATENT GMBH; BUENGER, JOACHIM; ZUR LAGE, JUTTA; AXT ALEXANDRA) 2 August 2001 (2001-08-02)

D3: REMACLE J ET AL.: "COMPARISON OF DIFFERENT PHLEBOTONICS ON HUMAN ENDOTHELIAL CELLS OF VEINS SUBJECTED TO HYPOXIA" PHLEBOLOGIE, vol. 44, no.4, 1991, pages 881-889, XP009043467 ISSN: 0031-8280

D4: EP-A-1 090 629 (L'OREAL) 11 April 2001 (2001-04-11)

D5: EP-A-0 366 156 (ISMAIL, ROSHDY, DR) 2 May 1990 (1990-05-02)

D6: DE 42 21 256 A1 (LANCASTER GROUP AG, 65185

WIESBADEN, DE; LANCASTER GROUP AG, 67059 LUD) 5 January 1994 (1994-01-05)

D7: US-A-5 786 384 (ISMAIL ET AL.) 28 July 1998 (1998-07-28)

2. Document D1: Essaven gel: aescinate (1%), heparin and phosphatidylcholine for the local treatment of venous diseases and microcirculatory disorders.

Document D2: Cosmetic formulation containing active ingredients such as caffeine and antioxidants containing, for example, lecithin. Rutin or troxerutin can also be included. Some formulations are suitable for use against dark eye circles.

Document D3: Phlebotonic formulations: troxerutin and ginkgo biloba; coumarin derivatives and rutin.

Document D4: Aescin formulation containing lipids for treating eye circles.

Document D5: Preparations for the treatment of diseases of the veins, containing vitamin E and preparations which stimulate the blood flow (e.g. rutosides, ginkgo flavonoids, horse chestnut extract, buflomedil or a plurality of the compounds mentioned).

Document D6: Galenic formulation consisting of phospholipids and pharmacologically active ingredients (e.g. heparin). Preparations for use on the eye.

Document D7: Skincare products containing, for example, heparin, horse chestnut extract, ginkgo extract, rutosides. Ointments containing heparin and phospholipids (example 118). The formulations

improve the blood circulation in the eye area. Rutosides also have anticoagulant properties.

3. Novelty (PCT Article 33(2))

The following claims are anticipated by the cited prior art passages in a manner prejudicial to novelty:

claims 1, 7, 11, 19 by documents D1 and D2;

claims 2, 8, 9, 12 by document D1;

claims 4, 13, 14 by document D2.

The combinations of features in **claims 3, 5, 6, 10, 15-18** are not known from the prior art. The claims are therefore novel (PCT Article 33(2)).

4. Inventive step (PCT Article 33(3))

Claims 1, 2, 4, 7-9, 11-14, 19, which are not novel, are likewise not inventive (PCT Article 33(3)).

The additional features in dependent claims 3, 5, 6, 10, 15-18 are known from the prior art cited.

Furthermore, no unexpected technical effect has been demonstrated for these features. They thus represent arbitrary and therefore obvious modifications of the known formulations and uses in documents D1 and D2.

Claims 1-19 are therefore not inventive (PCT

Article 33(3)).

5. Industrial applicability (PCT Article 33(4))

The PCT Contracting States do not have uniform criteria for assessing the industrial applicability of **claim 19** in its present form. Patentability may also depend on the wording of the claims. The EPO, for example, does not recognise the industrial applicability of claims to the medical use of a compound; it may, however, allow claims to the first medical application of a known compound or to the use of such a compound in the manufacture of a drug for a new medical application.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claims 1-6, 19 are not clear and do not satisfy the requirements of PCT Article 6 inasmuch as the subject matter for which protection is sought is not clearly defined. The following functional statements do not enable a person skilled in the art to establish the technical features necessary for carrying out the functions mentioned:

(a) anticoagulants;

(b) vasoprotective agents;

(c) substances that promote microcirculation.